



## STATEMENT OF THE CASE

Takia Harris (“Mother”) appeals the termination of her parental rights as to her minor children, T.H., J.H., and J.B.<sup>1</sup>

We affirm.

## ISSUE

Whether there was clear and convincing evidence to support the termination of Mother’s parental rights.

## FACTS

T.H. was born on May 31, 2002; J.B. was born on June 17, 2003; and J.H. was born on May 22, 2004.<sup>2</sup> In 2002, T.H. was determined to be a child in need of services (“CHINS”) and made a ward of the court after she tested positive for marijuana at birth. On May 19, 2003, the juvenile court dismissed T.H.’s wardship.

On September 26, 2004, the Lake County Office of Family and Children (the “OFC”) received a referral for J.H. after she was hospitalized for hyponatremia. Hyponatremia is a “metabolic condition in which there is not enough sodium in the body fluids outside the cells.” <http://www.nlm.nih.gov/medlineplus/ency/article/000394.htm> (Sept. 17, 2008). Hyponatremia may result in swelling of the brain, which may cause

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<sup>1</sup> The juvenile court also terminated the parental rights of the children’s father, Jonathan Boykins, but he is not part of this appeal.

<sup>2</sup> Mother has six children. Mother’s parental rights as to one child, A.H., were terminated in 2002 “because of abandonment.” (State’s Ex. 1). Two other children were born after the commencement of these proceedings but are not a part of the termination proceeding. Boykins is the putative father of five of the children.

convulsions, coma, and possibly death. *Id.* It is often caused by excess water intake. *See id.*

Mother reported that she had given four-month-old J.H. water because she “was greedy with her formula[.]” (Tr. 15). An investigation found all three children to be “filthy . . . .” (State’s Ex. 1). The investigation also found Mother’s residence met “the minimum standard for living.” *Id.*

The OFC removed the children and placed them in foster care. Following a hearing on October 5, 2004, the juvenile court made the children temporary wards of the OFC. The juvenile court ordered that the following services be provided to Mother: “[d]rug/alcohol evaluation and any recommended treatment”; “[i]ndividual counseling”; and parenting classes. (Mother’s App. 9). The juvenile court held its initial hearing on December 15, 2004, at which Mother admitted the material allegations of the CHINS petition. The juvenile court made the children wards of the OFC, retroactive to October 5, 2004.

Mother initially complied with the juvenile court’s order to participate in counseling and drug testing. Mother’s “initial drug screen was positive for marijuana, however, all subsequent drug screens were negative.” (Tr. 23).

Mother was unable to maintain stable housing after being evicted from public housing in July of 2005. Mother’s last contact with T.H., J.H., and J.B. was in June or July of 2005. In September of 2005, the family’s case manager, Vernita Brokemon, saw Mother standing on a corner in East Chicago. Brokemon spoke with Mother about continuing with services and set up an appointment with Mother to help Mother “come

back to services” and apply for assistance for Mother’s newborn child. (Tr. 27). Mother, however, did not keep the appointment; Brokemonnd did not “hear[] from her for that year.” *Id.* By January of 2006, Mother had moved to Louisville, Kentucky.

In July of 2005, after the birth of Mother’s fifth child, service providers started “having difficulty maintaining contact with [Mother]” and eventually discharged Mother due to “lack of availability.” (Tr. 24, 30). Mother did not appear at a review hearing on October 14, 2005. The juvenile court amended the permanency plan to termination of Mother’s parental rights and adoption. The juvenile court also ordered that Mother’s fifth child, born on July 13, 2005, be “placed in appropriate placement[.]” (Mother’s App. 15).

The OFC filed a petition to terminate Mother’s parental rights on October 4, 2006. The juvenile court held its final fact-finding hearing on January 30, 2008. Brokemonnd testified at the hearing as did Mother’s therapist, Danielle Smith.

Brokemonnd testified that in July of 2005, Mother “[s]topped visiting her children, stopped making herself available to [Brokemonnd] or the providers. She stopped her random drug screens, she stopped counseling.” (Tr. 49). Brokemonnd further testified that she believed termination of Mother’s parental rights would be in the children’s best interests because “the case plan has not been remedied”; Mother “cannot or has not established suitable housing for the children and [she has] been absent from the children”; and the children, who had been placed together, have established a bond with their foster parents. (Tr. 43).

Smith testified that she received a referral from the OFC in January of 2005 to provide individual counseling for Mother. Smith testified that Mother had “[i]ssues of neglect and abuse of her children”; further, Mother was “working on issues of keeping her home neat, maintaining her home . . . .” (Tr. 65). According to Smith, Mother’s “home was unkempt” and she would allow people to spend the night there. (Tr. 70). Smith believed that Mother was evicted from public housing due to failure to pay rent and allowing people not on the lease to live in her apartment.

Smith also testified that Mother and Boykins’ relationship was “[r]ocky, abusive, chaotic, dysfunctional, unhealthy, co-dependent.” (Tr. 66). Smith opined that Mother’s relationship with Boykins created an unhealthy environment for the children.

Smith provided services to Mother until July of 2005, when Mother ceased contact with Smith; therefore, Mother did not successfully complete the services. Father also failed to complete the services offered to him.

Mother testified that she did not comply with services because “it was kind of hard to get in touch with [her],” and she “had just had a baby.” (Tr. 85, 103). She testified that counseling “wasn’t helping . . . .” (Tr. 86). Nevertheless, she testified that she “had finished up with counseling” while living in Kentucky. (Tr. 88). Mother, however, did not provide any verification that she had completed counseling.

According to Mother, she and Boykins were married on October 19, 2006. Mother acknowledged that Boykins could be violent at times but married him “solely and purposely for [her] kids.” (Tr. 98). She testified that she and Father had been living

together with Mother's mother in Kentucky until Father was arrested on a bench warrant in November of 2007.

Following the hearing, the juvenile court issued its order, terminating Mother's parental rights. The juvenile court found, in pertinent part, as follows:

There is a reasonable probability that the conditions resulting in the removal of the child[ren] from their parents' home will not be remedied in that: The Children were removed from parental care in October 2004 when a referral was made to the [OFC] from the hospital when the baby was diagnosed with hyponatremia, given excessive amount of water. The parents indicated that the baby was greedy with the formula and looked thirsty. This was the second referral the [OFC] has received on this family. [T.H.] was born testing positive for drugs in 2002. The children were found to be filthy and custody was obtained of the children. Reunification Services were offered to the parents pursuant to a case plan which included parenting classes, counseling, drug and alcohol evaluations, random drug screens, psychological evaluations and visitations. . . . Mother was initially cooperate [sic] with services but stopped complying with services in July of 2005. Mother became sporadic with making herself available for the services. Mother was evicted from public housing due to non-compliance of their policies. Mother . . . could not maintain stable housing and moved frequently. Mother, at one time, resided in a homeless shelter and refused help and assistance. Service Providers closed their cases due to [M]other's non-compliance. Mother gave birth to another child which [M]other would not make available for the [OFC] to investigate. Mother has a total of six children, only two of which reside with [M]other. The grandparents have custody of one of the children through a guardianship hearing.

The parents have not been consistent with their visitations. The [p]arents have not had any contact with the children since 2005. The parents are not providing any emotional or financial support for the children. The parents have had sporadic contact with the [OFC]. . . . Mother and Father had a violent, abusive, unhealthy relationship and did not take advantage of counseling. . . . The parents have now moved to the State of Kentucky. The [p]arents never informed the [OFC] of the relocation. An Interstate Compact was initiated with the State of Kentucky and twice it was denied. Parents have failed to comply with the case plan.

The children have been removed since 2004 and have not been returned to parental care. Parents are unlikely to obtain custody of these children. The

[p]arents have not bonded with these children. Services were provided to the parents for a number of years and the parents are no closer to reunification. Reunification is unlikely for the parents and children. The parents are unlikely to ever be [in] a position to properly parent these children. Two of the children have . . . been diagnosed with mental handicaps and are special needs children. Removal of the children from their current placement would be detrimental to the children's well-being.

There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child[ren] in that: for the reasons stated above. Additionally, the children deserve a loving, caring, nurturing, drug free and safe adoptive home.

It is in the best interest[s] of the child[ren] and their health, welfare and future that the parent-child relationship between the child[ren] and their parents be forever fully and absolutely terminated.

The [OFC] has a satisfactory plan for the care and treatment of the child[ren] which is Adoption by the foster parents, Mr. and Mrs. Turner.

(Mother's App. 2-3).

### DECISION

Mother asserts that the trial court erred in terminating her parental rights. Specifically, Mother contends that that the OFC failed to prove by clear and convincing evidence that the conditions that resulted in the children's removal will not be remedied; the continuation of her relationship with the children poses a threat to the children; the termination of her parental rights is in the children's best interests; and adoption is a satisfactory plan.

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*,

717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *cert. denied*, 534 U.S. 1161 (2002). When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720.

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence most favorable to the judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *L.S.*, 717 N.E.2d at 208.

Mother asserts that the State failed to establish that the conditions resulting in the removal of the children will not be remedied and that a continuation of her parent-child relationship poses a threat to the children's well-being. The trial court need only find either that the conditions resulting in a child's removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*.

#### 1. Conditions Remedied



Mother argues that the OFC failed to establish that the conditions resulting in the children's removal will not be remedied. In determining whether the conditions will not be remedied, the trial court "first should determine what conditions led the State to place the child outside the home and with foster care, and second whether there is a reasonable probability that those conditions will be remedied." *Id.* The juvenile court should judge a parent's fitness to care for the child as of the time of the termination hearing and take into account any evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001), *trans. denied*. "The trial court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* "A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court also may consider the services offered to the parent and the parent's response to those services. *D.J.*, 755 N.E.2d at 684.

In this case, Mother's first referral to the OFC was in 2002, after T.H. tested positive for marijuana. Two years later, the OFC removed T.H., J.H., and J.B. from Mother's care after J.H. was hospitalized due to a condition caused by Mother giving her water in lieu of formula. An investigation further revealed that the children "were filthy," as was Mother's residence. (Tr. 15). The OFC offered Mother several services, including individual counseling.

Initially, Mother complied with services. In July of 2005, however, Mother ceased counseling. Mother also was evicted from her apartment and failed to maintain stable housing. She further failed to inform the OFC of her whereabouts and ceased all contact with the children. During the hearing, Mother testified that she had married the children's father, a person prone to violence and erratic behavior.

We find that there is ample evidence that the conditions resulting in the children's removal will not be remedied.

## 2. Best Interests

Mother also asserts that the OFC failed to establish that termination of her parental rights is in the best interests of the children. For the "best interest of the child" statutory element, the trial court is required to consider the totality of the evidence. *In re B.J.*, 879 N.E.2d 7, 22 (Ind. Ct. App. 2008), *trans. denied*. "[I]n determining the best interests of the children, the trial court must subordinate the interests of the parents to those of the children." *Id.*

Mother argues that termination of her parental rights is not in the children's best interests because "the eldest child, T.H., had not achieved . . . a bond" with her foster parents. Mother's Br. at 13. Our review of the evidence, however, reveals that although T.H. initially "was aggressive, and not very friendly" when placed with her foster parents, she now "appears happy" and readily gives her foster mother hugs. (Tr. 45).

Brokemon testified that the children's foster parents have been very patient and supportive of both T.H. and J.B., both of whom have developmental delays. According to Brokemon, the children require continued placement in a therapeutic foster home—

such as the one in which they are currently placed—in order to meet their needs. Finally, Brokemonnd testified that removing the children from their foster home and placing them with Mother would be detrimental to the children and “not in their best interest.” (Tr. 47).

The evidence further shows that Mother failed to complete her court-ordered services; failed to maintain suitable housing; and had married Boykins, who Mother admitted “act[s] out violently at times.” (Tr. 93). Based on the totality of the evidence, we find that there is sufficient evidence that termination of Mother’s parental rights is in the best interests of the children.

### 3. Satisfactory Plan

Mother contends that the OFC has failed to show that there is a satisfactory plan for the placement of the children. She argues that “the case plan disregards the potential placement of these children with the family with whom they [are] not only kin, but presently enjoy a relationship.” Harris’ Br. at 14.

Generally, adoption is a satisfactory plan. *See C.C.*, 788 N.E.2d at 856. Here, Brokemonnd testified that the children had developed a bond with their foster parents and that the foster parents could provide the children with a loving and stable home. Myra Turner, the children’s foster mother, testified that she and her husband had been the children’s foster parents for over three years. She further testified that they “[a]bsolutely” intended to adopt the children if Mother’s parental rights were terminated. (Tr. 80).

We conclude that there is sufficient evidence that the OFC has a satisfactory plan for the care and treatment of the children following the termination of Mother's parental rights. Therefore, we find that the elements necessary to sustain the termination of Mother's parental rights have been established by clear and convincing evidence.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.